

SEDGWICK COUNTY, KANS., BOARD OF COUNTY  
COMMISSIONERS

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JANUARY 29, 1951.—Ordered to be printed

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Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

## REPORT

[To accompany S. 448]

The Committee on the Judiciary, to which was referred the bill (S. 448) to confer jurisdiction on the Court of Claims to hear, determine, and render judgment upon a certain claim of the Board of County Commissioners of Sedgwick County, Kans., having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

## PURPOSE

The purpose of the proposed legislation is to confer jurisdiction on the Court of Claims to hear, determine, and render judgment upon, notwithstanding any law to the contrary, the claim of the Board of County Commissioners of Sedgwick County, Kans., against the Government of the United States on account of delinquent real-estate taxes for the tax years 1944, 1945, 1946, and 1947 assessed and levied against three tracts of land in sections 11 and 14 of township 28 south, range 1 east, of the sixth principal meridian, in Sedgwick County, Kans., constituting the aircraft factory and grounds owned in such years by the Defense Plant Corporation and the Reconstruction Finance Corporation and leased to the Boeing Airplane Co. and transferred on or about February 25, 1948, by the Reconstruction Finance Corporation to the United States subject to unpaid taxes for said 4 years. The court would determine the amount of said taxes and render judgment in favor of said Board of County Commissioners of Sedgwick County, Kans., and against the United States for the amount of any such taxes which such court may find and adjudge to have been lawfully assessed against such real estate and remaining

due and unpaid. In order to come under the provisions of this act, suit must be instituted within 60 days after the date of enactment of the act.

The bill specifically precludes the inclusion, in any action brought under the authority of this act, any item for "penalties, interest, and charges in connection with said taxes."

#### HISTORY OF LEGISLATION

Early in the Eighty-first Congress H. R. 7854 was passed by both the House of Representatives and the Senate. It included, in addition to the taxes herein included, an item for penalties, interest, and charges. Said bill did not receive the approval of the President and did not become law. The reason for the President's objection was the inclusion of the item for penalties, interest, and charges. Subsequently, S. 4205, Eighty-first Congress, was introduced, in which the objectionable items of penalties, interest, and charges were removed. S. 4205 was favorably acted upon by the committee and was, on December 21, 1950, favorably reported to the Senate in Senate Report 2692. In the final days of the Eighty-first Congress, said bill was not acted upon.

#### STATEMENT

Certain land near Wichita was, during the years 1944, 1945, 1946, and 1947 (or parts of said years) owned by the Defense Plant Corporation and the Reconstruction Finance Corporation. In 1948 the RFC conveyed the real estate in question to the United States of America, the conveyance by its terms reciting that said transfer was "subject to unpaid taxes for the years 1944, 1945, 1946, and 1947." The taxes have not been paid.

Various legal proceedings have been commenced to determine the amount and liability of the Government for these taxes. But no other action can be maintained because the consent of the United States has not been obtained for the United States to be sued. This bill merely grants said consent and permits the local taxing authorities to have a judicial determination of the liability for said taxes, and the amount thereof.

Attached hereto and made a part of this report by reference is the statement of fact appearing in Senate Report 2692, to accompany S. 4205, Eighty-first Congress. Said statement gives a complete detailed statement of the facts upon which this matter is based.

Also attached hereto and made a part of this report is the letter of August 15, 1950, to Congressman Celler from the Reconstruction Finance Corporation.

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[H. Rept. No. 2843, 81st Cong., 2d sess.]

#### STATEMENT OF FACT

During 1944, 1945, 1946, and 1947 the real estate constituting the Boeing Airplane factory near Wichita in Sedgwick County, Kans., was owned by the Defense Plant Corporation and the Reconstruction Finance Corporation (ownership being transferred from Defense Plant Corporation to Reconstruction Finance Corporation by Public Law No. 129, 79th Cong., enacted July 1, 1945).

In each of those 4 years Sedgwick County levied real-estate taxes against the property under the authority of section 10 of the Reconstruction Finance Corporation Act (title 15, U. S. C. A. 601 et seq., January 22, 1932) which provides that:

"Any real property of the Corporation (DPC or RFC) shall be subject to State or local taxation to the same extent according to its value as other real property is taxed (15 U. S. C. A. 610, since amended and now sec. 607)."

The theory of the county was that by this provision Congress had expressly waived the exemption of this property from State taxation and had made the property of DPC and RFC private property, as it were, for the purpose of State and local taxation, although it remained public property for all other purposes. (See *Borough of Homestead v. Defense Plant Corporation* (52 Atl. 2d 581), a case in which a steel mill owned by the Defense Plant Corporation was held to be subject to State and local taxes in Pennsylvania under similar circumstances.)

Neither the DPC nor the RFC paid any of the real-estate taxes for any of the 4 years, although they paid such taxes in other States. In September 1945, pursuant to the Kansas tax laws the property was sold for the 1944 taxes, penalties, interest, and charges, and was bid in by the county. The taxes for the three later years, upon becoming delinquent, were added to the amount of delinquent taxes against the property.

On February 25, 1948, by quitclaim deed the Reconstruction Finance Corporation conveyed the real estate to the United States of America, the deed by its terms reciting that said transfer and conveyance was "subject to unpaid taxes for the years 1944, 1945, 1946, and 1947." The taxes are still delinquent and unpaid, and the State of Kansas, county of Sedgwick, and the township and school districts involved are being deprived of their respective shares of these taxes. No taxes have been assessed against the property since the title was transferred to the United States February 25, 1948.

When the county, which is the sole tax-collecting agency, attempted to foreclose the tax lien, in the method provided by the Kansas tax laws after at least 3 years' delinquencies have accrued, the United States Government and the Reconstruction Finance Corporation resisted the foreclosure on the ground that the property is now owned by the United States as shown by the aforesaid recorded quitclaim deed and that, being property of the United States, no action can be maintained to collect the delinquent taxes, interest, penalties, and charges.

The State court sustained demurrers to the foreclosure petition on the ground that the United States, now being the owner, was an indispensable party to the proceeding; and, since the United States had not consented to be sued in any court in such a case, the county could not proceed with the action. No action can be maintained against RFC since under Kansas law no action to collect delinquent real-estate taxes can be maintained against a former owner of the property.

An act such as proposed in this bill is required to give the county its day in court by bringing an action against the United States in the Court of Claims to determine whether these taxes were lawfully assessed and should be paid.

As the matter now stands, there appears to be no adequate provision of law for court action, because of lack of statutory consent of the United States to be sued.

In the foreclosure action in the State court which was dismissed for lack of consent of the United States to be sued, the Department of Justice contended that the action could not be maintained without such consent and also contended that the taxes were not lawfully assessed against the property. The theory underlying the latter contention was that, while Congress had consented to the taxing of real estate owned by the DPC and the RFC, the act of Congress given that consent was ineffective as to this property in Kansas unless and until the Kansas Legislature should thereafter change or repeal the provision of the Kansas tax statute which states that "all property belonging exclusively to the United States shall be exempt from taxation" (79-201, General Statutes of Kansas, 1935). The county contends that when Congress waived the tax exemption as to real estate owned by the DPC and RFC, that exemption provision of the Kansas statute no longer applied to this property, and that the property was subject to taxation the same as privately owned real estate under the General Tax Statute of Kansas (79-101, General Statutes of Kansas, 1935), which states "that all property in this State, real and personal, not expressly exempt therefrom, shall be subject to taxation."

One of the principal arguments made by the county in support of its contention is that the exemption of property owned by the United States from State and local taxation was not granted by and does not flow from any constitutional or statutory provisions of Kansas law but rather from the general principle of sovereignty which prohibits subordinate governmental bodies from taxing property of the sovereign. The courts, including the United States Supreme Court, have repeatedly held since the decision in *Van Brocklin v. Anderson* (117 U. S. 151, 6 S. Ct. 670 (1885)) that such provisions in an act of Congress regarding admission of a State and in acts or resolutions of State legislatures accepting such provisions

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and in State statutes providing for the exemption of property owned by the Federal Government are not the basis of the immunity of Government property from location taxation. As said by the United States Supreme Court in the Van Brocklin case: "They are but declaratory, and confer no new right or power upon the United States."

The county also contends that, as said in Syllabus 2, *Central Pacific Railroad Co. v. State of Nevada* (162 U. S. 512, 16 S. Ct. 885):

"No action on the part of a State or its legislature is necessary to signify its acceptance of the authority conferred by a Federal statute for the taxation of interests in public lands."

Exemption of its property from taxation being a privilege of the Federal Government, Congress had a right to waive that immunity and did so as to this property when it provided in the Reconstruction Finance Corporation Act that "any real property of the Reconstruction Finance Corporation shall be subject to State or local taxation to the same extent according to its value as other real property is taxed." Having waived that immunity, this property was not "property owned exclusively by the United States" but was property owned by an instrumentality of the United States which Congress had seen fit to make subject to local taxation the same as privately owned real estate.

Hence, since the land is now owned by the United States by reason of the transfer of the title from the Reconstruction Finance Corporation to the United States "subject to unpaid taxes for the years 1944, 1945, 1946, and 1947," and no court action can be maintained by the county because Congress has not consented that the United States may be sued in such cases, the county has requested the enactment of this bill in order that these disputed questions may be adjudicated in the Court of Claims.

Therefore, your committee recommends favorable consideration to the bill.

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RECONSTRUCTION FINANCE CORPORATION,  
Washington, August 3, 1950.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.*

DEAR MR. CELLER: This is in response to your letter of April 10, 1950, requesting a report on H. R. 7854, a bill to confer jurisdiction on the Court of Claims to hear, determine, and render judgment upon a certain claim of the Board of County Commissioners of Sedgwick County, Kans.

The bill would confer jurisdiction on the Court of Claims to adjudicate the claim of the Board of County Commissioners of Sedgwick County, Kans., against the Government of the United States on account of delinquent real-estate taxes, penalties, interest, and charges for the tax years 1944 to 1947 assessed against property in Sedgwick County, constituting the aircraft factory and grounds owned in such years by the Defense Plant Corporation and the Reconstruction Finance Corporation and leased to the Boeing Airplane Co., and thereafter transferred by RFC to the United States subject to unpaid taxes. The Court of Claims would be authorized to render judgment against the United States for the amount of any such taxes, penalties, interest, and charges which the court may find and adjudge to have been lawfully assessed against such property and remaining due and unpaid. The facts in this case, as disclosed by our files, are as follows:

Following a request submitted by the War Department (Air Corps) the Defense Plant Corporation, a wartime subsidiary of the Reconstruction Finance Corporation, entered into a lease agreement with Boeing Airplane Co., dated June 5, 1941, which provided, among other things, for the establishment of a plant for the manufacture of aircraft and aircraft parts near Wichita, Kans., and for DPC's leasing such plant to Boeing.

Paragraph 20 of the lease agreement provided as follows:

"Twenty: Lessee agrees to pay to the proper authority, when and as the same become due and payable, except to the extent included in the Construction Program, all taxes, assessments, and similar charges (other than local improvement assessments) at any time during the term of this lease or any extension thereof may be lawfully taxed, assessed, or imposed upon Defense Corporation or Lessee with respect to or upon the Plant and the enlargement thereof, or the Machinery, or any part thereof, or upon the occupier thereof or upon the use of the Plant and the enlargement thereof or the Machinery; provided, however, that nothing herein contained shall be construed to obligate Lessee to pay sales or use taxes in connection with the Program."



It appears that Boeing also entered into a contract with the War Department under which it agreed to supply to the Air Corps certain types of military aircraft and aircraft parts produced in said plant. The War Department or the Air Corps agreed to reimburse Boeing for the costs incurred in the production of such aircraft and parts, which would include taxes paid by Boeing in accordance with the above-quoted provision of the lease agreement.

Defense Plant Corporation was dissolved on July 1, 1945, pursuant to Public Law 109 (79th Cong., approved June 30, 1945), and all of its functions, assets, and liabilities were transferred to the Reconstruction Finance Corporation. On July 26, 1946, the above-mentioned lease agreement was terminated, and soon thereafter the real property was declared surplus to War Assets Administration.

Boeing did not pay the taxes levied upon the real property covered by the lease for the years 1944-46. It appears to have been Boeing's contention that the property was not subject to taxation, that the taxes for the years 1944-46 were not lawfully assessed, and that Boeing was not obligated to pay such taxes. It also appears that the Air Corps would not improve reimbursement to Boeing in the event such taxes were paid, since the Comptroller General of the United States had indicated that it was his view that such property was not subject to taxation under the laws of Kansas relating to the taxation of real property owned by the Federal Government.

Boeing petitioned the district court of Sedgwick County, Kans., for a declaratory judgment, declaring that real property owned by RFC is exempt from taxation under Kansas law. On appeal from the decision of the district court sustaining a demurrer to the petition, the Supreme Court of Kansas dismissed the petition, holding that inasmuch as Boeing was not the owner of the property against which the taxes had been assessed no controversy existed between Boeing and the tax officials which was adjudicable under the Declaratory Judgment Act of Kansas.

Whether jurisdiction should be conferred upon the Court of Claims to render judgment in favor of the board of county commissioners against the United States for such amount of "taxes, penalties, interest, and charges" as the court may find to have been lawfully assessed against the property of which Boeing was the lessee, seems to us to be a matter for determination by your committee after consideration of all the facts in the case. So far as this Corporation is concerned, we would have no objection to the referral of the case to the Court of Claims. However, it is suggested that your committee may wish to give consideration to the question whether the United States should be exposed to a judgment not only for taxes but also for penalties, interest, and charges, as is provided in lines 9, 10, and 13 on page 2 of the bill.

Since your committee may wish to hold hearings on this bill in the near future, this report is being transmitted in advance of clearance with the Bureau of the Budget, to which copies are being sent. I am therefore unable to advise you at this time regarding the relationship of this proposed legislation to the program of the President.

Sincerely yours,

HARLEY HISE, *Chairman.*

Also attached hereto is copy of memorandum of disapproval, dated September 28, 1950, in which is given the reason said former bill (H. R. 7854) was not approved.

#### MEMORANDUM OF DISAPPROVAL

I am withholding approval of H. R. 7854, to confer jurisdiction on the Court of Claims to hear, determine, and render judgment upon a certain claim of the Board of County Commissioners of Sedgwick County, Kans.

The bill confers jurisdiction upon the Court of Claims to hear, determine, and render judgment upon the claim of the Board of County Commissioners of Sedgwick County, Kans., against the Government of the United States on account of delinquent real-estate taxes for the tax years 1944, 1945, 1946, and 1947 (together with penalties, interest, and charges) assessed and levied against three tracts of land in Sedgwick County, constituting the aircraft factory and grounds owned in such years by the Defense Plant Corporation and the Reconstruction Finance Corporation and which were leased to the Boeing Airplane Co., and transferred on or about February 25, 1948, to the United States. The measure also provides that the court shall determine the amount of taxes, penalties, interest, and charges, and render judgment in favor of the board of county commissioners against the United States for the amount of any of such items which the court

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may find and adjudge to have been lawfully assessed against the real estate and remaining due and unpaid.

The record shows that title to certain lands and buildings in Sedgwick County, Kans., was vested during those years in the Reconstruction Finance Corporation. The Corporation leased these lands to the Boeing Airplane Co. for the manufacture of aircraft under the contract with the Air Force. Under the provisions of the lease agreement, Boeing was responsible for any taxes validly assessed and the United States was in turn required to reimburse Boeing under a cost-plus-fixed-fee contract. The county taxing authorities levied taxes upon the real estate in question for each of the years 1944, 1945, 1946, and 1947, which taxes have not been paid. On February 25, 1948, the Reconstruction Finance Corporation conveyed the property to the United States. Thereafter, the county commissioners instituted an action in the district court of Sedgwick County to foreclose a lien for taxes on the property. The action was dismissed by the court on the ground that it was a suit against the United States and the United States had not consented to be sued.

I find objectionable those provisions in the bill which authorize the court to render judgment in favor of the county and against the United States for the amount of any penalties, interest, and charges, in connection with the taxes levied by the board of county commissioners. To impose a liability upon the Federal Government for such penalties, interest, and charges is inconsistent with the sound and long-established doctrines that claims against the United States do not bear interest and that the Federal Government is not liable for penalties. The enactment of legislation in derogation of these firmly established principles would, in my opinion, create a most undesirable precedent. Moreover, such provisions would discriminate against all other claimants. While I would not object to a measure which would merely permit Sedgwick County to secure a judicial determination in the Court of Claims of the question as to whether the tax assessed against the property involved was lawful, without creating any new cause of action, I cannot approve a measure which would permit recovery of penalties and interest against the United States.

HARRY S. TRUMAN.

THE WHITE HOUSE,  
September 28, 1950.

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